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November 14, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WRITER'S DIRECT DIAL NUMBER

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William S. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. -- Room 222
Washington, D.C. 20554
Mail Stop Code: 1170

Re: Notification of Ex Parte Contact in PP Docket No.
93-253, Competitive Bidding

Dear Mr. Caton:

On November 14, 1994, the attached letter was sent to William Kennard, with copies to Rosalind Allen and Donald Gips. Since the letter relates to matters in the above-referenced docket, a copy has been provided to your office for filing as an ex parte.

Should any questions arise concerning this notification, please contact the undersigned at (202) 463-5292.

Respectfully submitted,



Eric W. DeSilva

Encl.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William E. Kennard, General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 224
Washington, D.C. 20554
MAIL STOP CODE #1400

BY HAND DELIVERY

Re: Inquiry Regarding the Applicability of the Anti-Collusion Regulations to Prospective PCS Licensees With Affiliates that Provide PCS Marketing, Equipment Procurement, Network Installation, Engineering Consulting, Site Construction, and/or Management Services

Dear Mr. Kennard:

We are writing to request confirmation of an interpretation of Sections 1.2105(c)(1) and 1.2105(a)(2)(viii) relating to the applicability of anti-collusion limitations. Section 1.2105(c)(1) prohibits PCS bidders from:

cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified in the bidder's short-form application pursuant to Section 1.2105(a)(2)(viii).

Section 1.2105(a)(2)(viii), in turn, requires that applications include an exhibit to the short form, certified as truthful under penalty of perjury:

identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned,

William E. Kennard, General Counsel
November 14, 1994
Page 2

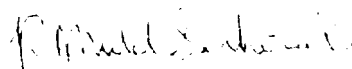
including any such agreements relating to the post-auction market structure.

In a recent letter responding to inquiries regarding the application of the anti-collusion requirements, the FCC observed that Section 1.2105(a)(2)(viii) "refers solely to agreements regarding the PCS licenses being auctioned."¹ It is our understanding that the intent of the rule is to require disclosure of any agreements that may have the effect of reducing competition in bidding for PCS licenses.

The anti-collusion rules identified above do not expressly recognize that some prospective PCS bidders may have affiliates that are engaged in other activities related to PCS, such as marketing, equipment procurement, network installation, site construction, engineering consulting, and/or management services to prospective PCS licensees. Because these activities do not implicate the competitive concerns underlying the anti-collusion rules, we are seeking confirmation that such negotiations, discussions, arrangements, and agreements are not "regarding the PCS licenses being auctioned" for purposes of Sections 1.2105(c)(1) and 1.2105(a)(2)(viii).

In order to provide the best and most useful cost and timing estimates to prospective customers, the types of negotiations discussed above, by necessity, sometimes involve market-specific information. Our clarification is therefore limited to situations where market-specific information derived through activities relating to the marketing of services by an affiliate to other potential PCS bidders is not disclosed to any personnel involved in bidding strategy discussions for the prospective PCS bidder. Thank you for your consideration.

Respectfully submitted,



R. Michael Senkowski

cc: Rosalind K. Allen
Donald H. Gips

¹ Letter from Rosalind K. Allen, Acting Chief, Land Mobile and Microwave Division, to R. Michael Senkowski (Oct. 26, 1994).